

to his house at Jalan Kolam Ayer and was walking down the lane on the right hand side when a car came round the bend and as it was proceeding down the lane in the same direction as he was walking, the car brushed past him so close that the triangular glass wind deflector on the driver's side came in contact with his left arm causing a fracture of the arm. He fell down and was later taken to hospital where it was found that he had a compound fracture and dislocation of the left elbow and severe crush injury of the soft tissues of that hand. Gangrene complicated the injuries and therefore an emergency and later a formal above elbow amputation of that limb was done. He was discharged from hospital on the 20th February 1964. The plaintiff could not identify the car nor the driver of the car responsible for the accident. The plaintiff called two youths who testified that they saw a car hit the plaintiff at about that time. They could identify the car and the driver as someone who was living in the same village. There was other evidence tending to show that it was the defendant's car which was involved in the accident. The defendant himself admitted that he was driving his car at the time of the accident but denied that his car was involved in any accident. Having heard the evidence and seen the witnesses I find that, on the balance of probabilities, it was the defendant's car which was involved in the accident on that day and that the accident was caused solely by the defendant's negligence in driving the said car.

As regards damages, special damages of \$602.75 had been admitted and the plaintiff has abandoned damages for loss of past earnings and potential future earnings. There is, therefore, only one question for consideration and that is as regards the quantum of damages for loss of the left arm. Generally an arm is worth more than a leg and this is borne out in *Kemp and Kemp on Quantum of Damages*, page 465, article 247, and the First Schedule, the Workmen's Compensation Ordinance 1952 where the legislators have fixed a higher percentage of loss of earning capacity for an arm than for a leg. The plaintiff was 42 years old at the time of the accident and married and was working for his brother who was the proprietor of a construction company in the capacity of bill collector, rent collector and sub-contractor. The plaintiff was in hospital for nearly two months during which he had to undergo two major operations. He must have suffered considerable pain and suffering as a result thereof. The plaintiff said that after he was discharged from hospital he had an artificial arm fitted but he found that it had no utility value. With or without the artificial arm the loss of this arm will be a permanent source of embarrassment to him and he will be considerably handicapped in the normal enjoyment of his life. On the other hand his means of livelihood is not likely to be seriously affected

A through the loss of the arm. Taking all these factors into account and paying heed to the current trend of considered opinion and awards in somewhat similar cases I assess general damages at \$22,500. In assessing general damages I had in mind the decision and award in *Pahang Lin Siong Motor Co. Ltd. & Anor. v. Cheong Swee Khai & Anor.*,⁽¹⁾ the Privy Council decision in *Jag Singh v. Toong Fong Omnibus Co. Ltd.*,⁽²⁾ and the decision of Gill J. in *I. R. K. Tandon v. Ng Siok Kwee & Anor.*⁽³⁾ I have taken note of the fact that in all these cases the plaintiffs were relatively young. I have, therefore, made adjustments accordingly.

C As a result there will be judgment for the plaintiff for the sum of \$23,102.75, interest under section 11 at 5% and costs to be taxed by a proper officer of the court.

Order accordingly.

D Solicitors: *Murphy & Dunbar; Lovelace & Hastings.*

HIN SENG & CO. v. SEAC CO.

[O.C.J. (Ambrose J.) January 14, 1966]

[Singapore — Originating Motion No. 13 of 1965]

Landlord and Tenant — Subletting — Rent — Application to Rent Conciliation Board to apportion rent of premises sublet by tenant — Whether standard rent of such sublet premises relevant — Control of Rent Ordinance (Cap. 242), ss. 9(1), 11, 13 and 22.

F The respondents were the tenants of premises at Philip Street, Singapore, at the rent of \$137.50 per month and they sublet a room to the applicants at a rent of \$190 inclusive of municipal charges commencing from 16th September, 1955. The applicants applied to the Rent Conciliation Board to determine the rent of the sublet room and on July 3, 1962, the Board fixed the rent of \$35 inclusive of municipal charges. The sublet room had been separately let for the first time on the 16th September, 1955, and the respondents applied to the Rent Conciliation Board to vary the order made by them on the ground that the standard rent of the sublet room was \$190 a month and the rent must therefore be restored to that figure. The Board purported to act under section 11(6) of the Control of Rent Ordinance and taking the view that their previous order was made in consequence of a mistake they restored the rent of the room to the figure of \$190 a month. The applicants therefore made an application under section 13(1) of the Control of Rent Ordinance to the High Court.

H Held: the original order of the Rent Conciliation Board was correctly made and the Board had no jurisdiction to vary the order. The rent of the sublet room had to be determined by apportionment and the rent at which the room was first let separately was irrelevant. Case referred to:—

(1) *Harwood & Anor. v. Perreau* [1955] M.L.J. 56.

ORIGINATING MOTION.

S. K. Lee for the applicants.

C. F. J. Ess for the respondents.

Cur. Adv. Vult. A

Ambrose J.: This is an application under section 13(1) of the Control of Rent Ordinance (Cap. 242) by Hin Seng and Company, who are aggrieved by a decision of the Rent Conciliation Board on the ground that it is wrong in law. I will call the applicants Hin Seng. The respondents are SEAC Company. I will call them SEAC.

SEAC are the tenants of the ground and first floors of the premises known as No. 11 Phillip Street, Singapore, the rent of the two floors being \$137.50 per month. They sublet an unfurnished room on the ground floor of the premises to Hin Seng at a rent of \$190 per month, inclusive of municipal charges, commencing from the 16th September, 1955. In Application No. 41 of 1962, Hin Seng applied to the Rent Conciliation Board for determination of the rent of the sublet room. On the 3rd July, 1962, the Board fixed the rent of the room at \$35 per month, inclusive of municipal charges, with effect from the 1st July, 1962. In Suit No. 1039 of 1962, Hin Seng sought to recover from SEAC the difference between \$190 and \$35 per month for the period of 81 months from the 16th September, 1955, to the 15th June, 1962, but they were unsuccessful. In Application No. 169 of 1964, SEAC applied to the Board under section 11(a) of the Control of Rent Ordinance to vary the order made in Application No. 41 of 1962.

Section 11 of the Ordinance provides as follows:—

"An order of the Board may be reviewed, varied or set aside by the Board in the following cases, namely:—

- (a) where the facts of the case affecting the question of rent have materially altered since the order was made;
- (b) where the order was made in consequence of any fraud, misrepresentation or mistake;

It was argued by counsel for SEAC before the Board that in the High Court suit it was not disputed between the parties that the room in question was let separately for the first time on the 16th September, 1955; that this point was not brought to the notice of the Board when it heard Application No. 41 of 1962; that, according to the statutory definitions of "premises" and "standard rent", the standard rent of the room was the rent at which it was first let separately, which was \$190 per month; and that the rent of the room must, therefore, be restored to the figure of \$190 per month.

It was argued by counsel for Hin Seng before the Board that there was no evidence that the facts of the case affecting the question of rent had materially altered since the order was made by the Board on the 3rd July, 1962; and that order should not be varied as the Board had no jurisdiction to vary it under section 11(a).

The Board relied on section 9(1) (b) of the Ordinance which reads as follows:—

"The Board shall have and may exercise the following powers, namely:—

- (b) to make orders fixing such rent at a figure equal to, below, or above the current or standard rent as to the Board may seem just and proper; or to refuse to make any such order; and from time to time to review, vary, or set aside any order made by it, as provided in section 11:

The Board decided that it had jurisdiction under section 11(b) of the Ordinance to consider the application. Section 11(b) is set out above. The Board apparently took the view that the order of the 3rd July, 1962, was made in consequence of a mistake, because the question of the first separate letting of the room was not brought to its notice in Application No. 41 of 1962 and the standard rent of the room was the rent at which it was first let separately, namely, \$190 per month, as was clear from the decision in *Harwood & Anor. v. Perreau*.⁽¹⁾ The Board accordingly restored the rent of the room to the figure of \$190 per month with effect from the 1st February, 1965.

Counsel for SEAC submits that the order of the 3rd July, 1962, was made by the Board in consequence of a mistake, because it was not brought to the notice of the Board when it heard Application No. 41 of 1962 that the room in question was let separately for the first time on the 16th September, 1955; and that, if that fact had been brought to the notice of the Board, it would not have altered the rent of the room from \$190 to \$35 per month, as it would have held that \$190 was the standard rent of the room and therefore a proper rent.

I am unable to accept this submission. In my view the order of the 3rd July, 1962, was not made in consequence of a mistake. Application No. 41 of 1962 was for determination of the rent of the sublet room. Such an application had to be dealt with by the Board under section 22 of the Ordinance, which reads as follows:—

"Where the tenant of any premises to which this Ordinance applies has sublet any part of such premises then the tenant or any sub-tenant of that or of any other part of such premises may at any time apply to the Board to apportion the rent of the whole premises as between the tenant and all the sub-tenants of any part or parts of the whole premises and to determine the rent of all or any one or more part of parts of the whole premises sublet to any and every sub-tenant thereof and the Board shall thereupon make such an apportionment and determination:

Provided always that the total of the rents payable to the tenant by all the sub-tenants shall not in the aggregate exceed one hundred and ten *per centum* of the rent of the whole premises after making an apportioned reduction in respect of any part of the premises retained by the tenant or not sublet by him:"

The rent of the sublet room had to be determined by the Board by apportionment and in accordance

with the proviso. The standard rent of the sublet room, that is, the rent at which it was first let separately, was irrelevant in determining the rent of the room under section 22.

For the reasons given above I come to the conclusion that the Board had no jurisdiction under section 11(b) of the Ordinance to vary the order of the 3rd July, 1962. I also hold that the Board had no jurisdiction to do so under section 11(a), as there was no evidence that the facts of the case affecting the question of rent had materially altered since the order of the 3rd July, 1962, was made. And I hold that the power given by section 9(1)(b) to the Board to review, vary or set aside any order made by it is limited to the cases set out in section 11.

I accordingly set aside the order made by the Board in Application No. 169 of 1964 on the 4th June, 1965, and restore the order made by the Board on the 3rd July, 1962. I also order the respondents to pay the applicants the costs of this application.

Order accordingly.

Solicitors: S. K. Lee; R. C. H. Lim & Co.

PUBLIC PROSECUTOR v. CHENG MENG BONG & ORS.

[A.Cr.J. (Yong J.) January 17, 1966]

[Alor Star — Kedah Criminal Appeal No. 31 of 1965]

Customs Ordinance, 1952, ss. 116 and 117 — Chemist reports — Admissibility of — Presumption — Testing of 10% of each description of package or receptacle in which goods are contained — Not necessary to test 10% of the goods.

Criminal Law and Procedure — Charge — Offences relating to goods carried on different vehicles — Separate trials.

Evidence — Chemist reports — Admissibility of — Presumption under Customs Ordinance, 1952, s. 116.

This was an appeal by the Public Prosecutor against the acquittal of the respondents who were jointly tried on charges of possession of dutiable tobacco. The ground of acquittal was that the chemist reports which were produced to prove that the goods were tobacco were inadmissible. The learned magistrate agreed with the defence counsel who argued that at least 10% of the nett weight of the tobacco should be sent to the Government chemist and as this was not done, the reports of the Government chemist were not admissible.

Held: (1) to raise the presumption under section 116 of the Customs Ordinance it would be sufficient to open, examine and if necessary to test the contents of only 10% of the packages or receptacles of each description and the section does not require the taking of any particular quantity or weight for testing provided samples are taken from the contents of 10% of every description or type of packages or receptacles;

(2) as the offences related to goods carried on different vehicles, the charges should have been separately tried.

Case referred to:—

(1) *Au Ah Lin v. Public Prosecutor* [1963] M.L.J. 365.

A CRIMINAL APPEAL.

Wan Ismail bin Mohamed Salleh (Deputy Public Prosecutor) for the Public Prosecutor.

Lim Cheng Chuan for the respondents.

Cur. Adv. Vult.

- B Yong J.: This is an appeal by the Public Prosecutor against the acquittals of the accused Cheng Meng Bong and Tah Kim Sia in Sungei Patani Sessions Court Arrest Case No. 30 of 1964, and Lim Boon Dee and Ang Kee Hiang in Sungei Patani Sessions Court Arrest Case No. 31 of 1964. These two cases were jointly tried by the learned president, who summarily acquitted and discharged all the four accused without calling on their defence and before the prosecution had adduced all its evidence, on the ground that since the two chemist reports were not admissible, there was therefore no evidence to prove that the tobacco found in the two vans
- C Nos. K. 2823 and KA. 1920 were in fact tobacco.

The Public Prosecutor appeals on two grounds, the first of which is as follows:—

"The learned president erred in law in holding that the chemist reports were inadmissible."

- For ease of reference in this appeal, the said
- E four accused persons Cheng Meng Bong, Teh Kim Sia, Lim Boon Dee and Ang Kee Hiang shall hereinafter be referred to as the first, second, third and fourth respondents respectively. The facts of these two cases are briefly as follows:—

- F The first and second respondents were charged for being knowingly concerned in conveying in their van No. K. 2823, dutiable goods, to wit, 16 bales of tobacco weighing 1468 lbs. with intent to defraud the Government of duty thereon amounting to \$5,138 and thereby committed an offence under section 131(1)(e) and punishable under section 131(1) of the Customs Ordinance, 1952.
- G

- H The charge against the third and fourth respondents was that they were knowingly concerned in conveying in their van No. KA. 1920, dutiable goods, to wit, 20 bales of tobacco weighing 1831½ lbs., with intent to defraud the Government of the duty thereon, amounting to \$6,410.25 and thereby committed an offence under section 131(1)(e) and punishable under section 131(1) of the said Ordinance.

- I The prosecution evidence showed that shortly after midnight on 25th April, 1964, at the junction of Butterworth-Alor Star Road and Bedong-Tanjong Dawai Road, two vans loaded with tobacco were seen proceeding to Alor Star. The customs officers, waiting there, gave chase. Mahmud bin Ibrahim, the Assistant Superintendent of Customs, and three of his officers stopped van No. KA. 1920. Seated at the driver's seat